IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1944 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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REGIONAL DIRECTOR - Appellant(s)
Versus
KARSANBHAI MALABHAI - Defendant(s)

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Appearance :

MR HEMANT S SHAH for Appellant(s) : 1,
MS ASHA H GUPTA for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/09/2006

ORAL JUDGMENT

1. This appeal is directed against the judgement and order dated 04.01.1994 passed by the Employees Insurance Court, Ahmedabad in E.S.I. Application No. 42 of 1985 whereby the same was allowed and directed the original opponents to pay all the T.D.B. advantages between 24.1.1985 to 09.07.1985.

2. The short facts of the case are that the original appellant was serving in Bharat Vijay Mills at Kalol. On 23.01.1985, while on duty the original claimant fell down and suffered an injury on the back

portion of his body. The ankles of both the limbs were injured. He was taken to Civil Hospital and treated there. He therefore filed the aforesaid claim petition which was granted.

3. Learned advocate for the appellant has submitted that the lower court has erred that no medical expert is examined by the original respondent and the Court is not either a medical expert or is under the Evidence Act, nor entitled to decide any medical aspect without the assistance of medical opinion and, therefore, his decision contrary to the decision of the Surgeon is absolutely unjustified and illegal and the decision based upon his own conjectures, contrary to medical opinion, is liable to be set aside.

3.1 He further submitted that the lower court has also erred in not appreciating that the Medical Referee at Exh. 30 has also opined that there was no employment injury, resulting into any temporary disablement.

4. Heard. I have gone through the judgement and

order of the lower court. While passing the judgement the trial court has observed that at Exh. 22 it is established that the original claimant should be referred to the Medical Board for examining his nature of injury. It was also held that the injury was sustained during the office hours. Therefore looking to the overall facts and circumstances of the case interest of justice would be met by passing the following order:

It shall be open for the appellant to move the Medical Board for examining the nature of injury. If the matter is referred, the Medical Board shall disposed of the same within 3 months from the dated of receipt of such reference.

5. With the above direction the appeal is disposed of. It is clarified that while referring the matter to the Medical Board the Court has looked interest of Corporation.

(K.S.JHAVERI, J.)

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